

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE



SEA STAR LINE, LLC., a)
limited liability company,)

Plaintiff,)

C.A. No. 05-CV-245-JJF

v.)

EMERALD EQUIPMENT LEASING,)
INC., a corporation,)

Defendant.)

v.)

SEA STAR LINE, LLC.,)

November 1, 2007

2:00 p.m.

Courtroom 4B

844 King Street

Wilmington, Delaware

BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.
United States District Court Judge

APPEARANCES:

SMITH, KATZENSTEIN, FURLOW, LLP
BY: KATHLEEN M. MILLER, ESQ.

-and-

ARMSTRONG & MEJER, P.A.
BY: TIMOTHY J. ARMSTRONG, ESQ.

Counsel for the Plaintiff

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1 APPEARANCES CONTINUED:

2 ECKERT SEAMANS

3 BY: BRYA M. KEILSON, ESQ.

4 BY: GARY M. SCHILDHORN, ESQ.

5 BY: ALAN I. MOLDOFF, ESQ.

6 Counsel for the Defendant

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1 THE CLERK: All rise

2 THE COURT: Be seated, please.

3 And good afternoon.

4 (Everyone said, Good afternoon,
5 Your Honor.)

6 THE COURT: All right. Do you
7 want to announce your appearances?

8 MS. MILLER: Good afternoon, Your
9 Honor. Kathy Miller on behalf of Sea Star Line.
10 And I have with me my co-counsel, Tim Armstrong.

11 THE COURT: Good afternoon,
12 Mr. Armstrong.

13 MS. KEILSON: Good afternoon, Your
14 Honor. Brya Keilson of Eckert Seamans on behalf
15 of Emerald. I have with me Gary Schildhorn and
16 Gary Moldoff.

17 MR. SCHILDHORN: Good afternoon,
18 Your Honor.

19 MR. MOLDOFF: Good afternoon, Your
20 Honor.

21 THE COURT: All right. I've taken
22 a look at what you have filed since we --
23 including the proposed trial order -- since we
24 got together back in August. And what I've

1 decided to do here is to take the Sea Star case
2 against Emerald and sever it from the
3 counterclaim of Emerald and move it to trial.

4 And I think we have some tidying
5 up to do with regard to some third-party work
6 that Sea Star wanted to get done and a
7 deposition or so that you wanted to get done.

8 And go ahead.

9 MR. ARMSTRONG: That's correct,
10 Your Honor.

11 THE COURT: Okay. And so, we'll
12 get a trial date for that trial today in some
13 time frame for you to get those items that you
14 wanted to get accomplished accomplished. And I
15 think we can probably complete that case in the
16 next three or four months.

17 Now, on the Emerald counterclaim,
18 I gave the opportunity to have some kind of
19 representative discovery conducted. And without
20 commenting on the results in any way that would
21 make a ruling, I think that Emerald has at least
22 shown that there is information relevant to the
23 counterclaim that might be available through
24 further discovery efforts if they were permitted

1 to be expanded.

2 But I'm not so sure that there
3 aren't a lot of blind alleys that can be gone
4 down with regard to that discovery, particularly
5 if it goes beyond -- let's say it goes to Sea
6 Star customer information and that type of
7 thing. What I'm going to do is talk with -- I'm
8 going to talk with Judge Stark, our new
9 magistrate judge this afternoon in about an
10 hour, and I'm going to request that he take on
11 the supervision of that discovery, so that you
12 can have a judicial officer available to make --
13 I was weighing, you know, going back and forth
14 between, you know, requiring a Special Master
15 and using a Magistrate Judge.

16 But I think that there are some
17 legal complexities with regard to what Emerald
18 wants to do that really require a judicial
19 ruling, whether it's by Judge Stark or by
20 myself. But if he does it, at least I can
21 review it, because I think in the context of
22 what Emerald wants to do, we're probably a ways
23 off from being ready for trial.

24 And whether they're going to be

1 permitted to do it may carry with them some
2 legal decisions that I think I'd feel more
3 comfortable with a judicial officer from the
4 Court making those rulings than a Special Master
5 from outside.

6 Yes.

7 MR. ARMSTRONG: Your Honor, we
8 received the Emerald letter on Monday. Do we
9 have a right to respond?

10 And if so, you know, it wasn't
11 couched in the form of a motion or a memorandum.
12 It was the letter.

13 THE COURT: Well, I thought it was
14 couched -- well, let me say this: Yes, you have
15 a right to respond.

16 MR. ARMSTRONG: Okay.

17 THE COURT: I didn't think it was
18 an application, the letter. I thought it was a
19 report.

20 And I thought that I had already
21 said what I was going to do if they could
22 demonstrate in some way that there was some
23 merit to what they wanted to go after. And
24 unless -- but I'm going to give you a chance to

1 respond.

2 Let me say this: So I didn't look
3 for a response, because I took the 42-percent
4 number.

5 Is that what it was?

6 MR. MOLDOFF: Yes.

7 THE COURT: On the Baxter inquiry
8 as being uncontested, to the extent that it was
9 what they were looking for. But you can
10 certainly respond to it, both factually and from
11 a going forward point of view.

12 MR. ARMSTRONG: All right.

13 THE COURT: But I'm still going to
14 send you to Judge Stark.

15 MR. ARMSTRONG: That's fine. But
16 is there a time frame? Is there ten days?

17 THE COURT: I would say at least
18 ten days, because I think I'm going to let Judge
19 Stark set that schedule. In other words, if
20 you're going to be doing anything and the kind
21 of things you want to raise, they're going to,
22 in the first instance, be heard by him.

23 So why don't you hold off until he
24 calls you, so he can make -- I'm going to talk

1 with him about this case, the counterclaim case.
2 Let me talk to him and then he'll probably get
3 in touch with you.

4 And I'll bring this up if you want
5 to respond. Let him put it into the schedule
6 that he's going to contemplate going forward.

7 MR. ARMSTRONG: Yes. Well, we are
8 planning to respond. We're not waiving that.

9 THE COURT: Okay.

10 MR. ARMSTRONG: Thank you, Your
11 Honor.

12 THE COURT: Do you have any
13 questions about where you're going?

14 MR. SCHILDHORN: Always, Your
15 Honor. But in particular with this case, I have
16 some as well.

17 THE COURT: Okay.

18 MR. SCHILDHORN: Your Honor, I'm
19 trying to contemplate how this will proceed as
20 severed. And I guess my first question is: Are
21 you simply -- everything is out, the declaratory
22 judgment aspect of Sea Star's claim, or are you
23 also trying initially the monetary aspects of
24 it, which include rental charges, storage

1 charges, et cetera?

2 THE COURT: I'm going to charge --
3 I'm going to try or decide the either legal or
4 mixed legal and fact questions of the count that
5 deal with the declaration of rights under the
6 agreement, which I think that's your first area
7 that you've brought up.

8 And the second area I'm going to
9 hear or we're going to try the damages claims
10 under those agreements and any modifications
11 that deal with both the shipping and the storage
12 claim that was made by Sea Star against Emerald.

13 And there was a third area, and
14 I'm just not remembering.

15 MR. MOLDOFF: The third area, I
16 believe, Your Honor, was an issue of what they
17 called overcharges, but the overcharges
18 intimately involved.

19 THE COURT: That may be the one
20 that won't get tried because of the relationship
21 to the counterclaim.

22 MR. MOLDOFF: Okay.

23 THE COURT: But I'm going to wait
24 until we get through this discovery. And we're

1 going to have a pretrial conference on the Sea
2 Star complaint, and that may be the one that
3 gets sliced out.

4 But the other two are definitely
5 in for the first trial.

6 MR. SCHILDHORN: And Your Honor,
7 just thinking on my feet here, will the
8 testimony that's presented in that trial be
9 available to be used in the second trial without
10 having to recreate it in a second trial?

11 THE COURT: If it -- yes, is the
12 -- I always like to give a yes or no answer to a
13 lawyer's question like the objection part. Yes,
14 it will be available, because we don't want to
15 waste your resources.

16 And since there will be what I
17 would think is some overlapping testimony, I'll
18 allow that. What I won't allow is seepage of
19 the counterclaim issues into the trial on Sea
20 Star's complaint.

21 So in other words, sometimes
22 lawyers think, well, on cross-examination, I'd
23 like to ask this, because the witness is here
24 and it really doesn't principally relate to the

1 issues on trial. I won't allow that.

2 But I will allow the use of
3 testimony that overlaps.

4 MR. SCHILDHORN: We had reserved
5 the right in the pretrial to take additional
6 discovery in light of the discovery that's
7 ongoing by Emerald's side. Do we still have
8 permission to take additional discovery beyond
9 the customers and the ship manifest that we've
10 asked for in our motion, if it's limited to one
11 or two witnesses in a deposition?

12 THE COURT: Well, we're going to
13 talk about that right now. The discovery on Sea
14 Star's complaint is what we're going to talk
15 about. And I'll listen to anything that you
16 want to request.

17 But my understanding was that was
18 not outstanding discovery on the Sea Star count.
19 But I'll listen to you.

20 Okay. So is there anymore
21 questions about the separation?

22 MR. ARMSTRONG: No, Your Honor.

23 THE COURT: All right. Now,
24 again, I have this from the August hearing and

1 the papers, but do you want to tell me what it
2 is that you, that Sea Star would like to do by
3 way of tying up the discovery for the counts
4 that you would present at the first trial?

5 MR. ARMSTRONG: Your Honor, Your
6 Honor issued an order allowing the Emerald
7 deposition. I really have to look at that in
8 light of Your Honor's rulings today and
9 determine what aspects of the Emerald deposition
10 would relate to the first, that is the
11 complaint, if any.

12 It may be that, under the
13 circumstances, the Emerald deposition would be
14 postponed to the counterclaim discovery period.
15 I may need just Emerald to identify some
16 documents. I just have to review that.

17 And also I may need a couple
18 records custodians, one or two records
19 custodians to identify documents. But I believe
20 that insofar as the complaint is concerned, we,
21 that is both parties, have done their discovery.

22 In fact, Emerald objected in May
23 to the additional discovery that Sea Star wanted
24 in connection with the counterclaim. So I think

1 that we're pretty well set on the complaint.

2 THE COURT: All right.

3 MR. ARMSTRONG: I just have to
4 look.

5 THE COURT: All right. Emerald.

6 MR. SCHILDHORN: Your Honor, I
7 think I tend to agree with Mr. Armstrong. I
8 would like to reserve the right to go back and
9 think about what Your Honor has said today about
10 the severing of the trial. There may be some
11 limited information that I would have been able
12 to get in differently if we were trying the
13 cases together, and I may need a deposition at
14 this point to bring it in, such as a record
15 keeper.

16 I have to think about it. But may
17 I propose to Your Honor that if we believe there
18 is additional discovery that has to be taken, we
19 submit a letter to Your Honor within --

20 THE COURT: Well, here's what
21 we'll do. You both have a sense of where you
22 are on Sea Star's complaint. Why don't I give
23 you a couple weeks, two weeks or so to decide if
24 you want any additional discovery.

1 And if you can agree to it, I
2 won't interfere with what you agree to. In
3 other words, if you each want to take a
4 deposition or something of a custodian or
5 whatever you want to do.

6 And let's say, though, that
7 whatever disputes you have, you'll submit to me.
8 In other words, if you have a request for
9 discovery, but it's disputed, --

10 MR. SCHILDHORN: I understand.

11 THE COURT: -- or the other side
12 has, you'll submit them by November 22nd, the
13 disputes only.

14 And any discovery that you want to
15 do by agreement, let's say that has to be
16 completed by December 14th. So those kinds of
17 things you're describing don't seem like they
18 should take very long.

19 So it will be closed out by
20 December 14th. And we should be ready for trial
21 after the first of the year on that complaint.

22 MR. SCHILDHORN: Your Honor, I'm
23 going to go back and ask a question about
24 severing.

1 THE COURT: Sure.

2 MR. SCHILDHORN: Let's assume for
3 the purpose of this argument that Your Honor
4 determines that there are rental charges that
5 might be due and owing for storage on one of the
6 grounds for relief that Sea Star has requested
7 as storage charge, that would be on a monetary
8 judgment; I assume there would be no enforcement
9 of any judgment?

10 THE COURT: There won't be any
11 execution on any monetary judgment until we have
12 the second case resolved, because it would be an
13 offset.

14 MR. SCHILDHORN: Right. That's --
15 I could have just said wouldn't there have been
16 an offset, but I was too wordy on that, Your
17 Honor.

18 THE COURT: That's all right.

19 MR. SCHILDHORN: That's where I
20 was heading on that. Let me think about that,
21 Your Honor.

22 I appreciate the opportunity for
23 counsel to work together. I'm hopeful we should
24 be able to cooperate without submitting a

1 discovery dispute. I don't know any judge that
2 likes a discovery dispute.

3 So to the extent we can work it
4 out, we'll make an effort to do so.

5 THE COURT: Actually discovery
6 disputes are easy. You only have a 50-percent
7 chance of being wrong when there's only two
8 parties.

9 MR. ARMSTRONG: You're being
10 optimistic.

11 THE COURT: That's true. That's
12 true. All right.

13 Now, this is a jury trial on the
14 complaint; right? No. It's a non-jury.

15 MR. SCHILDHORN: Non-jury.

16 THE COURT: And on the
17 counterclaim -- I'm sorry. Go ahead.

18 MR. ARMSTRONG: No. Both of them
19 are non-jury.

20 THE COURT: Yeah, non-jury. And
21 do you have your calenders with you, so I can
22 give you a range of when you can talk about?
23 I'm not going to give you a date today, but --

24 MR. SCHILDHORN: My calender is

1 with me, but it's with the security guard
2 downstairs.

3 THE COURT: Oh, okay.

4 MR. ARMSTRONG: Why don't you give
5 us a range to work with.

6 THE COURT: Why don't I give you a
7 range and then you can work with it.

8 As a bench trial, I can pretty
9 much try this any time during the month of
10 February 2008. And that would be my preference,
11 assuming we get closed out in December,
12 mid-December, and we could have a supplemental
13 pretrial order submitted in January. We'd be
14 ready to go.

15 And as I said, I'm available any
16 time during the month of February. And I would
17 also be available any time or I'd make myself
18 available. I have some conflicts, but I could
19 make myself available any time during the month
20 of April of 2008.

21 THE COURT: So whatever date you
22 pick.

23 MR. SCHILDHORN: I have a request,
24 Your Honor.

1 THE COURT: Okay.

2 MR. SCHILDHORN: I think we've
3 mentioned in our papers that our client has been
4 anxious to go to trial. We're the plaintiff for
5 quite some time. I was wondering if we could
6 set the April date for the trial on the Sea Star
7 on the Emerald counterclaim.

8 THE COURT: Right.

9 MR. SCHILDHORN: And we'll make
10 the February date for the complaint, assuming
11 that we still have a counterclaim, so that at
12 least my client knows that it's got a day or a
13 time period set aside to try the case in this
14 matter.

15 THE COURT: I can do that. I can
16 set -- if you are available at Sea Star, we can
17 set February for the Sea Star date and April.

18 Now, the only caveat would be, and
19 it's your trigger on what you're going to want
20 to discover and put Judge Stark through. So as
21 long as you convince Judge Stark that what
22 you're going after can all be accomplished and
23 wrapped up and ready for an April trial, I'm
24 okay with that.

1 MR. SCHILDHORN: Your Honor, if
2 there's discovery that we want to take between
3 now and for the April hearing, --

4 THE COURT: Yes.

5 MR. SCHILDHORN: -- I presume we
6 don't have to wait until the February trial is
7 concluded --

8 THE COURT: Oh, no.

9 MR. SCHILDHORN: -- to seek that
10 discovery?

11 THE COURT: Right.

12 MR. SCHILDHORN: I can't imagine
13 that I'll need more time than that, Your Honor.

14 THE COURT: You can be preparing
15 for the February trial, and concurrently doing
16 your discovery for the April trial. The only
17 wrinkle is you'll be seeing me in February. And
18 during the time of your discovery on Emerald's
19 counterclaim, you'll be seeing Judge Stark.

20 MR. SCHILDHORN: And I assume,
21 Your Honor, that you're going to not rule on the
22 partial motion for summary judgment and the
23 motion for the appointment of a master. You're
24 going to defer or you're going to deny that, one

1 way or another?

2 THE COURT: I'm just going to
3 leave them sitting there for the time being,
4 because as I read through the papers and
5 reviewed the August discussions, I think this,
6 of course, since it's my plan, I should think
7 it's a good plan.

8 It's kind of being modest, but I
9 think I've got you on a track that will work for
10 you, you and the Court and get everybody out of
11 here by the end of spring.

12 MR. SCHILDHORN: I understand,
13 Your Honor. I appreciate it.

14 THE COURT: So I'm just going to
15 sit on those motions, because I don't think
16 right now they're helpful.

17 MR. SCHILDHORN: I appreciate it,
18 Your Honor. Thank you for the clarification.

19 MR. ARMSTRONG: Your Honor, in
20 regards to the counterclaim, my understanding is
21 that we don't start any additional discovery
22 until Judge Stark has an opportunity to set a
23 schedule or contact counsel.

24 THE COURT: Well --

1 MR. ARMSTRONG: Is that correct?

2 THE COURT: Sort of.

3 MR. SCHILDHORN: I was hoping we
4 could do it with agreement without the Judge's
5 intervention.

6 THE COURT: Well, you're going to
7 have to meet with him to get a schedule, and
8 then he'll be available to you. But let me say
9 this: Your answer may, in some way, cause
10 limitations on the discovery that Emerald seeks.
11 But it's not going to prohibit discovery in some
12 fashion.

13 So if when you two meet, like
14 you're going to meet about the discovery on your
15 complaints, if you can agree to something
16 starting to go forward, there's no prohibition
17 from going forward on some things that Emerald
18 wants to get and then that you want to get.

19 MR. ARMSTRONG: Well, I wasn't
20 really thinking about Emerald's discovery. I
21 was thinking in terms of the Emerald deposition
22 and any other discovery that I want to take in
23 regard to the counterclaim.

24 THE COURT: You can --

1 MR. ARMSTRONG: I understand.

2 THE COURT: You can start moving
3 on that.

4 MR. ARMSTRONG: I can start any
5 time on that?

6 THE COURT: Yes.

7 MR. ARMSTRONG: All right, Your
8 Honor.

9 THE COURT: Well, after your first
10 meeting with Judge Stark.

11 MR. ARMSTRONG: That's what I
12 wanted to clarify.

13 THE COURT: Which is going to be
14 like next week, --

15 MR. ARMSTRONG: All right.

16 THE COURT: -- either by phone or
17 he'll bring you back in.

18 But the only thing I ask you to do
19 is wait until you meet with him, so you can give
20 him a broad idea of what you're doing. Then you
21 get started.

22 But you're not going to have to be
23 held off like even two weeks. You're going to
24 be able to get going next week once you get with

1 him.

2 MR. ARMSTRONG: That's fine.

3 Thank you, Your Honor.

4 THE COURT: And when you get with
5 him, if you both have talked in the mean time
6 and you have agreement and you just said, Judge,
7 this is what we want to do and we appreciate you
8 being available if something comes up that's
9 disputed, then you can have at it.

10 MR. ARMSTRONG: All right. Thank
11 you, Your Honor.

12 THE COURT: Is that your
13 understanding?

14 MR. SCHILDHORN: Yes, Your Honor.
15 I think I'll think of my additional questions
16 after you leave the bench.

17 THE COURT: Okay. And so, you
18 know, I will be available by phone, but
19 sometimes I don't hear it ring.

20 That's what my kids accuse me of.
21 They say, Dad, how come you never answer your
22 cell phone? I say, Oh, I hear it. I know it's
23 ringing. No, I'm only kidding.

24 I think you're going to be able to

1 make a lot of agreements with each other. But I
2 do think there's some things, from what I saw in
3 the papers, that Judge Stark may have to decide,
4 if I understand where Emerald wants to go. But
5 we'll see.

6 MR. SCHILDHORN: Thank you, Your
7 Honor. I appreciate your clarification.

8 THE COURT: Okay. So you're going
9 to get back to me. I'm going to get Judge Stark
10 to call you.

11 MR. SCHILDHORN: Right.

12 THE COURT: I'm going to meet with
13 him this afternoon, and he'll be calling you to
14 either get you on the phone or to have you in in
15 person, whatever his or your preferences are.

16 I'll be putting an order in place
17 that just has the November 22nd and December
18 14th dates in it. And then you'll be telling me
19 what you have agreed to as trial dates in
20 February and April.

21 MR. SCHILDHORN: Great.

22 THE COURT: Okay? All right.

23 Thank you very much. We'll be in
24 recess.

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THE CLERK: All rise.

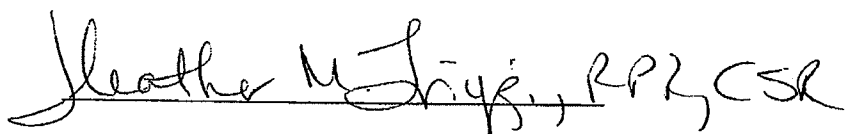
(Court was recessed at 2:24 p.m.)

1 State of Delaware)
2)
3 New Castle County)
4

5 CERTIFICATE OF REPORTER
6

7 I, Heather M. Triozzi, Registered
8 Professional Reporter, Certified Shorthand Reporter,
9 and Notary Public, do hereby certify that the
10 foregoing record, Pages 1 to 26 inclusive, is a true
11 and accurate transcript of my stenographic notes
12 taken on November 1, 2007, in the above-captioned
13 matter.
14

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal this 27th day of November, 2007, at
17 Wilmington.
18

19 
20

21 Heather M. Triozzi, RPR, CSR
22 Cert. No. 184-PS
23
24